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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 **TERRENCE WATKINS,**
12 **Petitioner,**
13 **vs.**
14 **PEOPLE OF THE UNITED STATES,**
15 **Respondent.**

CASE NO. 13-CV-3174-H
(BGS)

ORDER DENYING
WITHOUT PREJUDICE
REQUEST FOR TOLLING

16
17 Petitioner, a state prisoner proceeding pro se, has filed a document entitled “Ex
18 Parte Motion to the Court for the Purpose of an Extension of Time, For a Period of 60
19 Days” asking the Court to toll the deadline for filing his habeas corpus petition
20 pursuant to 28 U.S.C. § 2254. The Court is without jurisdiction to extend the one-year
21 statute of limitations of 28 U.S.C. § 2244(d)(1)(A)-(D), which provides that the
22 limitation period shall run from the latest of:

23 (A) the date on which the judgment became final by the conclusion
of direct review or the expiration of the time for seeking such review;

24 (B) the date on which the impediment to filing an application
25 created by State action in violation of the Constitution or laws of the
United States is removed, if the applicant was prevented from filing by
such State action;

26 (C) the date on which the constitutional right asserted was initially
27 recognized by the Supreme Court, if the right has been newly recognized
28 by the Supreme Court and made retroactively applicable to cases on
collateral review; or

1 (D) the date on which the factual predicate of the claim or claims
2 presented could have been discovered through the exercise of due
3 diligence.

4 28 U.S.C.A. § 2244(d)(1)(A)-(D).

5 The statute of limitations does not run while a properly filed state habeas corpus
6 petition is pending. 28 U.S.C. § 2244(d)(2); see Roy v. Lampert, 465 F.3d 964, 968
7 (9th Cir. 2006). But see Artuz v. Bennett, 531 U.S. 4, 8 (2000) (holding that “an
8 application is ‘properly filed’ when its delivery and acceptance [by the appropriate
9 court officer for placement into the record] are in compliance with the applicable laws
10 and rules governing filings.”). However, absent some other basis for tolling, the statute
11 of limitations does run while a federal habeas petition is pending. Duncan v. Walker,
12 533 U.S. 167, 181-82 (2001).

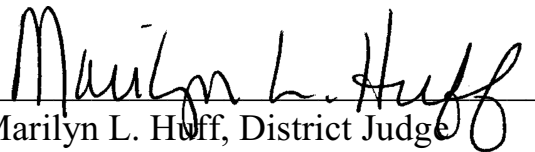
13 Petitioner has not filed a Petition for writ of habeas corpus in this action,
14 therefore, he has not initiated habeas proceedings in this Court. Isley v. Arizona Dep't
15 of Corr., 383 F.3d 1054, 1056 (9th Cir. 2004) (citing Woodford v. Garceau, 538 U.S.
16 202, 208-10 (2003)) (“[A] habeas proceeding is ‘pending’ only after the petitioner has
17 placed before the court an actual request for relief from the judgment of conviction.”).

18 CONCLUSION

19 For the foregoing reasons, the Court denies Petitioner’s request to toll the statute
20 of limitations without prejudice. The Court directs the Clerk to close the case.

21 **IT IS SO ORDERED.**

22 DATED: January 2, 2014

23 
24 Marilyn L. Huff, District Judge
25 UNITED STATES DISTRICT COURT
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